

Stephen R. Shelton
Hearing Examiner
City of Sumner

June 7, 2023

Donald F. Casad
9318-8 Veterans Drive SW, Apt A
Lakewood, WA 98498

RE: CUP-2022-0002; Convenience Store and Fuel Station

Dear Mr. Casad:

Transmitted herewith is the Report and Decision of the City of Sumner Hearing Examiner relating to the above-entitled matter.

Sincerely,



STEPHEN R. SHELTON
Hearing Examiner

SRS/ss

cc: Parties of Record

OFFICE OF THE HEARING EXAMINER

CITY OF SUMNER

REPORT AND DECISION

PROJECT NAME: Convenience Store and Fuel Station

PROJECT NUMBER: CUP-2022-0002

APPLICANT/OWNER: Donald Casad
9318-8 Veterans Drive SW, Apt A
Lakewood, WA 98498

PROJECT LOCATION: 15012 Main Street E.
Sumner, WA 98390
(SE corner of Main Street and Valley Avenue)

PARCEL NUMBERS: 0520193800, 0520193100 and 0520193022

PROJECT COMPONENTS: Conditional Use Permit, SEPA, Design Review, Lot
Line Adjustment, Demo, Civil and Building permits

PROJECT DESCRIPTION: Construct a 3,616-square foot convenience store and
eight (8) fueling stations which includes frontage
improvements, cross access corridor, landscaping,
seating areas, site lighting and stormwater
management.

STAFF REPRESENTATIVE: Scott Waller, Associate Planner

STAFF RECOMMENDATION: Approve With Conditions

PUBLIC HEARING: After reviewing the Development Services Department
Staff Report and examining available information on
file, the Hearing Examiner conducted a hybrid public
hearing (in-person and virtual) as follows:

The hearing was opened on Tuesday, April 18, 2023, at 1:15 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

Exhibit A	Development Services Staff Report
Exhibit B	CUP Application
Exhibit C	CUP Criteria Cover Letter
Exhibit D	Site Plans and Elevations
Exhibit E	Floor Plan
Exhibit F	Proof of Ownership
Exhibit G	Good Neighbor Plan
Exhibit H	ALTA Survey Valley Sq
Exhibit I	Environmental Clean up
	1. Summary Letter
	2. Farralon Report 7-18-2022
	3. ECY Letter 1-9-2023
Exhibit J	Traffic Impact Analysis
Exhibit K	SEPA Checklist
Exhibit L	SEPA MDNS
Exhibit M	Design Review Director's Decision
Exhibit N	CUP Notice of Application and Hearing
Exhibit O	Zoning Maps
	1. Zoning Map 1995
	2. Zoning Map 2005
	3. Zoning Map 2021
Exhibit P	Public Comments (includes SEPA and CUP Comments)
	2021-2022:
	1. SEPA Comments
	2. CUP Comments
	2023:
	3. SEPA and CUP Comments
Exhibit Q	Sumner Ordinance No. 2824
Exhibit R	PSCAA Correspondence 5-16-2022

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

SCOTT WALLER, Associate Planner, appeared and introduced the hybrid hearing. The Examiner approved his request to admit Exhibits A-Q into the record which had been submitted prior to the hearing and which included public comments in Exhibit P that had been submitted during the 2021 and 2022 review of the prior proposal. The Examiner then granted his request to admit additional individual public comments submitted in 2023 under the existing Exhibit P which included documents entitled "Community & Environmental Defense Services" and "Sumner Healthy Alliance Petition." The Examiner granted his request to admit a new Exhibit R, an email from the Puget Sound Clean Air

Agency. He then presented an overview of the Staff Report (Ex. A) regarding the Applicant's request for a Conditional Use Permit (CUP) to construct a 3,616-square foot convenience store and eight (8) fueling stations at 15012 Main Street E. The project on the corner of Main and Valley would include frontage improvements, cross access corridor, landscaping, seating areas, site lighting and stormwater management. The site comprised of two vacant parcels and one parcel currently operating as a single family dwelling is located in the General Commercial (GC) zone within the East Main Street Plan area which has specific design requirements such as landscaping and fencing. The proposed use of a convenience store and gas station is a conditionally allowed use in the GC zone. He summarized the history of the project which had been submitted in 2021 in regard to a 7-11 store and fuel pumps and then withdrawn and refiled as a new application for a conditional use permit for a generic convenience store and fuel pumps on July 8, 2022, which predated the Sumner City Council approval of Ordinance 2824 that prohibits such a proposal within the General Commercial zone. Therefore, if approved, the proposed fuel component would be considered a legal non-conforming use and the convenience store component would be considered as an outright permitted use. Mr. Waller then reviewed the conditional use criteria to be reviewed by the Examiner and the public comments in opposition to the proposal. He concluded by noting the Staff recommendation for approval of the proposal subject to conditions of approval.

DONALD CASAD, Applicant/Owner, summarized his background as a civil engineer and noted that he agreed with Mr. Waller's presentation and recommendation of approval with the stated conditions. He purchased the property in 2007 and had originally filed the request under an agreement with the 7-11 corporation but then withdrew it when 7-11 "dropped out." He then decided to refile as the generic store and fuel pumps with an understanding that 7-11 could be involved in the future if the CUP is approved. He understood the neighbors' concerns about the project and explained the "Good Neighbor Plan." He reviewed the site plans which would also address neighbor concerns such as increased traffic and traffic dangers, pedestrians walking through the neighborhood and increased criminal activity and numbers of people being in the area. As to the concern about the gas vapors, he noted that there had been no public complaints regarding the current Fred Meyer and Arco gas stations located in the vicinity. He concluded by opining that the proposed use would be the "highest and best use" of the property.

PUBLIC COMMENTS were made in person and virtually by numerous individuals which addressed the same ongoing concerns that had been submitted to the City throughout the pendency of the prior proposal in 2021 and 2022 and the current proposal in 2023. The individuals who addressed the Examiner were thoughtful, considerate, articulate and very well informed as they presented their strongly held concerns that the proposal should not be approved because it was not in the public interest and would be detrimental and/or injurious to the public and to them personally as well as to their properties. The general areas of concern were clearly pertinent to the location of the proposal and included traffic, crime, safety, loitering, community character, garbage, litter, disturbance by 24 hour operations and air quality.

BILL LYNN, Attorney for the Applicant, noted that the neighbors and general public concerns were not unimportant but they were more applicable to requests for rezones or variances and not for a proposal which implements the uses approved by the city council in the General Commercial zone. He stated the Applicant will be required to comply with the city design review criteria and the adopted city and state standards regarding the Growth Management Act. As to the concerns for air quality, studies at the city, state and federal level do not support the neighbors' concerns and the standards are based on a balancing of various interests including the convenience of motorists. In sum, the proposal is an allowed use and will comply with all requirements.

No one spoke further in this matter. The Examiner took the request under advisement.

The hearing was concluded at 2:35 p.m.

NOTE: A complete record of this hearing is available in the office of the City of Sumner Community Development Department.

After admitting documentary evidence into the record, hearing testimony and taking this matter under advisement, the Hearing Examiner issues the following Findings of Fact, Conclusions of Law and Decision.

FINDINGS OF FACT:

1. On July 19, 2021, the original Applicant, 7-Eleven #41923, on behalf of the current Owner, Donald Casad/Valley Square LLC, filed the City Environmental Checklist regarding a proposed 3,616-square foot convenience store & (4) MPD fuel station located on the southeast corner of Main St E & Valley Ave E which included a street corner entrance as well as a parking lot entrance, outdoor seating areas along both streets, 16 parking stalls, a cross access corridor between Valley Ave E and Bock Ave, utilities, trash enclosure, landscaping and a fuel canopy. The address was 15012 Main St E, Sumner, WA 98390 on parcels #0520193800, #0520193100 and #0520193022 located within the City General Commercial Zone (GC) in the SW1/4 of SW1/4 of Section 19, T20N, R5E, W.M. (Ex. K)
2. On July 23, 2021, Ryan Windish, Community Development Director, issued a "Director's Decision" conditionally approving Design Review for the subject filed by Ja-ay Klintharvorn on behalf of 7-Eleven and the owner, Donald Casad. The proposal, PLN-2020-0078, was approved subject to certain conditions to be addressed prior to building permit issuance. (Ex. M)
3. On March 21, 2022, the Applicant 7-Eleven filed a Traffic Impact Analysis which concluded that the project would generate about 2,121 average weekday daily trips with 147 trips in the PM peak hour. However, the majority of traffic, approximately 59-percent, was not considered to be new trips to the adjacent roadways but rather

pass-by trips which are motorists who are already traveling along the corridors and make a stop at a store and/or fuel station. The study of the capacity and operation of the three existing intersections concluded that all met the City of Sumner's Levels of Service (LOS) standards. (Ex. J)

4. On April 7, 2022, the Sumner Planning Commission held a study session on proposed amendments to the zoning regulations for gas stations which included a prohibition of gas stations in the General Commercial Zone (GC). (Ex. Q)
5. On April 14, 2022, the proposed amendments to the zoning code regarding gas stations were forwarded to the Washington State Department of Commerce for the Expedited 15-day State review pursuant to the Washington State Growth Management Act. (Ex. Q)
6. On April 21, 2022, on behalf of the Applicant, Valley Square LLC, Farallon Consulting, LLC, notified the Washington State Department of Ecology (DOE) that they were representing the Applicant and summarized the environmental conditions of the subject property which had been enrolled in the DOE Voluntary Cleanup Program (VCP) known as the "Sumner Auto Repair Petrosave" commencing in 1998.
7. On May 5, 2022, the Sumner Planning Commission voted by a 4-0 vote to recommend adoption by the City Council of the proposed zoning code regulations that included a prohibition of gas stations in the General Commercial Zone. (Ex. Q)
8. On May 25, 2022, Ryan Windish, Responsible Official, Community Development Director, issued a Mitigated Determination of Non-Significance (MDNS) on finding that the proposal does not have a probable significant adverse impact on the environment and an environmental impact statement (EIS) is not required. In addition to his findings, he listed specific "SEPA MITIGATION MEASURES" that will be required and which City Staff is recommending as a condition of approval no. 2. On April 10, 2023, Mr. Windish issued a modified MDNS to update the applicant and ownership information and the project name.
9. As noted above, Applicant 7-11 initially began the permitting process for this site and sought to construct a convenience store and gas station and had completed Design Review and SEPA review. The project then shifted from a proposed 7-11 as the end user to a more speculative convenience store and gas station proposal.
10. On July 8, 2022, the Applicant/Owner Donald Casad/Valley Square LLC filed application No. CUP-2022-0002 for a Conditional Use Permit (CUP) to develop the existing 31,363-square foot, 3-parcel lot with a convenience store of approximately 3,616-square foot in size and four (4) MPD fuel station and parking lot in the

General Commercial (GC) zone with an overlay East main Street Design Area.
(Ex. B) The Applicant/Owner holds a possessory interest in the subject property.
(Ex. F)

11. The Applicant's CUP application vested the proposal to the land use regulations in effect at the time of the filing which permitted gasoline service stations and convenience stores with gasoline sales in the GC zone subject to approval of a Conditional Use Permit (CUP). If approved and constructed, the gas station component would then be regulated by SMC 18.46.040(G)(5) as a non-conforming use. The convenience store would continue to be an outright permitted in the GC zone. (Ex. A)
12. On July 18, 2022, the Sumner City Council found that the proposed amendments to be consistent with the Sumner Comprehensive Plan and the Sumner Municipal Code criteria for Zoning Code amendments and passed Ordinance No. 2824 updating zoning regulations for gas stations within the City. The Ordinance included an amendment to Sumner Municipal Code (SMC) 18.16.020 entitled "Principal and conditional uses" that repealed the authority for gasoline service stations and convenience stores with gasoline sales as a conditional use in the General Commercial Zone resulting in the outright prohibition of such use in the GC zone. The effective date of Ordinance No. 2824 was July 26, 2022. (Ex. Q)
13. On July 18, 2022, on behalf of the Applicant, Valley Square, LLC, Farallon Consulting, LLC, filed a request to DOE to issue a "No Further Action" (NFA) determination based on data submitted that confirmed the previous remedial actions had been completed on the Site and are protective of human health and the environment. The request was made due to the 2017 DOE issuance of an Opinion Letter regarding the cleanup for the site which was impacted by petroleum hydrocarbons from gasoline-range organics and diesel-range organics in the soil and groundwater; benzene, toluene, ethylbenzene, and xylenes in the soil and groundwater and trimethylbenzene in the groundwater. (Ex. I)
14. On January 9, 2023, the DOE issued a determination that further remedial actions are necessary to clean up contamination at the site. However, based on the Environmental Conditions Summary Report filed by Farallon in 2022, DOE concluded that the preferred remedial alternative for cleanup that the Applicant selected will likely meet the substantive requirements of the Model Toxics Control Act (MTCA). Therefore, DOE advised that upon completion of the requested compliance monitoring, the Applicant could submit a request for an NFA determination to Ecology's VCP. (Ex. I) (also see Condition of Approval No. 11)
15. Pursuant to SMC 18.56.030(H), the proposed CUP is classified as a Type V decision. Therefore, the Notice of Application and the Notice of Public Hearing were posted on site and at Sumner City Hall, mailed to all property owners within

500-feet, posted on the City website and published in the official city newspaper, the Courier Harold on March 30th, 2023 in accordance with SMC 18.56. (Ex. A)

16. The topography of the site is predominantly flat and includes remnants of the previous development. There are no designated shorelines as defined by the Sumner Shoreline Master Program within 200-feet of the boundaries of the site pursuant to the Sumner Shorelines Map and there are no wetlands on the site as defined by the National Wetlands Inventory or the 2007 City of Sumner Wetland Inventory. (Ex. A)
17. The proposed development will be accessed through three driveway approaches, one on Valley Ave, one on Main Street and one on Bock Ave. The Main Street approach will be right in right out and is included to allow fuel tanker trucks to access the site. The access from Valley Ave is existing and part of the Jack in the Box site and will connect through to Bock Ave to create a cross access corridor as designated in Sumner's East Sumner Neighborhood plan. The City of Sumner provides water, sewer and storm services to the site with PSE providing power. (Ex. A)
18. As noted above, the site is located in the GC zone classification wherein the proposed use of a convenience store and gas station is a conditionally allowed use. The site is also within the East Main Street plan area which has specific requirements that are described in the Design Guidelines and in SMC 18.16 and SMC 18.43 such as pulling buildings up to the street, pedestrian oriented facades, pedestrian features, limiting driveways and constructing cross access corridors. (Ex, A)
19. The proposal is in the vicinity of the following zone designations and land uses: North is GC and Neighborhood Commercial (NC) and northwest of the intersection both zones include a variety of commercial establishments including restaurants, coffee shop, retail grocery store and gas station; East is GC with business establishments including a bank and funeral service; South is Low Density Residential 8,500 (LDR-85) and GC with single family homes and commercial establishments such as fast-food restaurant with drive through and a smoke shop; West is GC and Low Density Residential 6,000 (LDR-6) with single family homes, a phone store and a fast-food restaurant with drive through. (Ex A)
20. The subject site is designated General Commercial (CG) within the Sumner Comprehensive Plan. The CG designation is applicable to the proposal as it is applied to areas outside of the downtown area and urban villages where retailing, commercial, and office uses that serve a larger market are promoted. The uses accommodate automobiles to a greater degree and buildings with street orientation, screened parking, and ample landscaping ensure more attractive centers. Primary uses include retail businesses. Secondary uses include

convenience stores that are compatible with the surrounding neighborhood. Features such as additional landscaping, reduced front setbacks, screened parking, and pedestrian scale lighting and signage are encouraged. With these goals in mind, new development in general commercial areas require design review and a balance in the accommodation of all transportation modes including transit and pedestrians is achieved. (Comp. Plan p. 44)

21. City Staff has articulated the numerous Comprehensive Plan policy statements related to this proposal to which the Examiner agrees and, therefore, incorporates verbatim in the Findings herein. (Ex. A)
22. The Washington State Department of Ecology has submitted the following comments regarding the proposal's MDNS:
 - On November 4, 2021, DOE commented on the environmental checklist filed by Applicant 7-11 and noted standard requirements for solid waste management but did have specific comments regarding the continuation and completion of the ongoing Voluntary Cleanup Program (VCP) and noted that any discovery of potentially contaminated media would require testing and notification to the DOE. (Ex. P)
 - On June 8, 2022, DOE specifically addressed toxic cleanup of all waste generated by demolition of existing structures to be managed in accordance with the State dangerous waste regulations and reaffirmed the continued applicability of the comments included in the November 2021, letter. (Ex. P)
23. On May 31, 2022, Jennifer M. Keating, Land Use Planner, Puyallup Tribe of Indians, requested a cultural resource survey prior to any ground breaking at the proposed site due to high probability for impacting cultural resources. (Ex. P)
24. A significant number of citizens filed public comments with the City during 2021 and 2022 in response to the original SEPA process and notice of the 7-11 proposal as well as during 2023 in response to application for the CUP filed by the Applicant herein, Donald Casad. (Ex. P) A high percentage of the comments have been duplicative due to the length of time the proposal has been pending. All of the comments, in the Examiner's opinion, have been well intentioned and well written as they articulated various negative aspects and negative impacts the convenience store and fuel station could have on the neighborhoods immediately surrounding the proposed site and the Sumner community as a whole. In addition to the individual comments, a document entitled "Sumner Healthy Neighborhoods Alliance Petition" has been filed with the City which lists citizens opposing the project as well as including complete or excerpts of their individual comments.
25. In response to the high number of citizen concerns about the proposal, City staff has compiled and summarized the general areas of citizens' opposition to the store

and fuel pumps and provided brief general response to such concerns. Although no summary can adequately address the number of concerns and the City responses, the Examiner finds the Staff summary sufficient to incorporate it verbatim in the Findings herein. (Ex. A p.8-10)

26. The Applicant has filed a document entitled the "Proposed Good Neighbor Plan, Sumner Main Street Association" which briefly and generally provides the Applicant's response to the various comments in opposition to the proposal. (Ex. G)
27. The Sumner Healthy Neighborhoods Alliance filed a document dated December 4, 2021, from the "Community & Environmental Defense Services" which references "New Gas Stations & the Need for Sumner Public Health Safety Zone." The apparent author, Richard D. Klein, states, "As the Alliance requested, I have reviewed the City of Sumner Zoning Regulations and other ordinances with regard to proposed gas stations and measures to safeguard public health." His concern is that the public health impact is far greater than previously thought due to harmful compounds being released into the air from underground fuel storage tank vents and at the pump during refueling. After a brief analysis, he concludes that "there are no control measures required for new gas stations that can reliably resolve the public health impact." His primary advice to the Sumner City Council, and arguably to all governing bodies, to protect the public from harm due to harmful emissions is to amend the zoning regulations with a requirement that a proposed gas station site must be a minimum of 500-feet from residential properties to create a public health safety zone for all new gas stations, including the proposal discussed herein. (Ex. P)
28. On May 16, 2022, Ivan Acquaaah, Engineer with the Puget Sound Clean Air Agency sent an email to Mr. Waller stating the following regarding the proposal: (Ex, R)
 - When Stage 1 and Stage 2 vapor recovery systems are installed, operated, and maintained properly, there should not be any odors. If residents do have an odor complaint, they many file their complaint with their respective clear air agencies.
 - I did not find and history with the usage of vapor bladders for gasoline dispensing facilities. However, depending on the system the facility may be required to install a vapor process which can eliminate fugitive emissions from tanks. Note: Vapor balance enhanced vapor recovery (EVT) systems do not require vapor processors, as this is accepted to be redundant.

CONCLUSIONS OF LAW:

1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.

2. Based on the Findings of Fact herein, the proposal is generally consistent with the City of Sumner Comprehensive Plan and Zoning Code designations of the subject property being located the General Commercial zone in effect on July 8, 2022.
3. SMC 18.56.030(I) provides that a decision on an application for a Conditional Use is a Type V decision which requires a public hearing and decision by the hearing examiner and is appealable only through the judicial system.
4. SMC 18.48.030(B) entitled "Conditional Use Permit" states:

Applications for conditional use permits shall be reviewed in accordance with chapter 18.56 SMC as a Type V decision and subject to the provisions of this chapter. The hearing examiner shall make the final decision.

5. SMC 18.48.050 entitled "Permit – Criteria to grant" states:

The director or hearing examiner shall be guided by the following criteria in granting an administrative or conditional use permit:

- A. The proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated;

The Applicant asserts the proposal is not detrimental as proposed use as it is designed to enhance the surrounding area by replacing two vacant lots and a single-family home with a new convenience store/fuel station with large pedestrian friendly sidewalks along Main St E and Valley Ave. Other enhancements include pedestrian friendly plazas, benches, a bike rack, trellis and landscape areas with seating height brick walls. Traffic circulation is separated from the pedestrian areas and pedestrian routes are provided within the site, where pedestrians have to cross with traffic. (Ex. C)

The City agrees with the Applicant's assertion as the project will mitigate the negative impacts of the project by the conditions of the Design Review approval, city ordinances and regulations, and the conditions of approval included in the MDNS and the CUP decision herein. Specifically, the City notes the following elements of the mitigation and, particularly, adequate separation from the residential zones:

- Proposed landscaping which exceeds code requirement and fencing that will screen the site in conjunction with the perimeter landscaping such as the 15-foot to 20-foot landscape buffer with 6-foot high fencing separating the site on the south and southeast from residences;

- In addition to the landscaping, the site layout and design utilizing low brick walls and trellising to screen the fuel station;
- Locating the fuel vent away from residential areas;
- Reducing noise impacts by compliance with the City noise ordinance regarding the compressor, locating the loading stall to reduce delivery truck noise and back up alarms, signage to turn engines off while delivering, requiring compliance with construction hours and best management practices;
- Exterior lighting will include down shields and a photo metric plan to ensure the proposal will not create offsite lighting impacts;
- Traffic impact will be minimal due to a majority of the customers being "drive through" or "neighborhood residents" unlike destination usage such as a restaurant;
- "Nuisance" impacts will be minimized by no loitering signage, middle arms on benches to deter persons sleeping, an open line of site into the store and the various other approaches included in the "Good Neighbor" plan.

On an overall review, the Examiner agrees that the mitigation measures ranging from site design to landscape plantings meet or exceed the requirements of the GC zoning and ensure that the proposed use will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated. However, the Examiner also notes that the mitigation measures are predominantly the "hardscape" structural components of the proposal and concludes that he would be remiss if two "elephants in the room" that are of grave concern to the neighboring community are not recognized and discussed: human behavior and public health.

A majority of the citizens' concerns relate to bad acts of people who will be visiting the store on foot or in vehicles, acts which are reasonably assured to be increased by the 24-hour operation of the store. The probable bad acts of pedestrians range from loitering, littering, intoxicated behavior, shop lifts and robbery to instances when individuals will wander through the neighborhood creating more opportunity for criminal behavior such as vehicle break-ins and thefts. The probable bad acts of drivers can range from loud car stereos to misusing the various entrances and exits and thereby increasing traffic, traffic congestion and auto accidents within and through the neighborhood. In addition to actual possible bad behavior, the residents will likely have an increase in their daily "life stress" by living near a busy convenience store with fuel pumps.

After identifying the potential and probable negative impacts created by human behavior and the Applicant's reasonable and thorough mitigation measures to address such behavior in addition to recognizing that the site has been designated

by the Comprehensive Plan and the Zoning Code as General Commercial, the Examiner herein concludes that the impact of the proposal created by "bad actors" does not rise to the level of being materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated.

The second "elephant" is the grave concern also articulated by a majority of citizens that the proposal will be injurious to the public welfare by the adverse health effects resulting from benzene and other harmful compounds being released into the air from the underground fuel storage tank vents and at the gas pumps during refueling.

Richard D. Klein's December 4, 2021, advised the Sumner Healthy Neighborhoods Alliance regarding the research into the harmful health effects of the gasoline constituent, benzene. After discussing the relevant research, Mr. Kline stated that the only solution to address the health risk associated with gas vapor emissions is to require a minimum distance between residences, schools, daycare facilities and the site of the fuel. He advises that a public health buffer ranging from 500-feet between residences and the fuel station and up to 1,000-feet for schools is necessary. He also opined that "It appears that the State of Washington does not require measures to control vapors release from underground storage tank vents except 1% of time when tanks are being filled."

The Applicant has been addressing the environmental health risks of exposure to gasoline and vapors since 2021 when the SEPA Checklist was submitted to the City. The Applicant's proposed measures to reduce or control the hazards are summarized in relevant part as follows: (Ex. K, SEPA Checklist p. 6-8)

Fuel will be stored in two double walled underground storage tanks with electronic sensors between the wall and hazardous material containment equipment will be located onsite and monitored, maintained and inspected in compliance with State of Washington regulations. (WAC 197-11-960) One tank will store regular unleaded gasoline (RUL) and the other tank is split to store 12,000-gal diesel fuel and 8,000 gal premium unleaded gasoline (PUL). The Underground Storage Tanks (UST) are made of non-corrosive double-walled fiberglass per UST Performance Standards). After the tanks are installed they are rigorously tested. Once the fuel station passes testing and is in compliance with state environmental agencies, the fuel station can be licensed by the state of Washington and begin to receive fuel. Which is delivered in bulk to the site.

Once the fuel tanker is connected to the fuel tanks, vapors are routed through a hose from the tanks back into the tanker helping to avoid releasing fuel vapors into the air. This system is called Stage I Vapor Recovery. Excess fuel vapors from the USTs are captured and transported

away from the site to a fuel center. Once the fuel is stored in the tanks, it is pumped out via the customer through each fuel dispenser. Additional vapor recovery equipment will be installed on each dispenser, helping to prevent fuel vapors from being released into the air. This system is known as Stage II Vapor Recovery. Stage I & II vapor recovery will be installed at this fuel station.

The UST's and fuel systems will be monitored at all times for leak detection and mal functions and will be constructed and installed in accordance with all applicable local, state and federal regulations. The proposed fuel system is also designed with tank monitoring systems for continuous leak detection and is protected against corrosion, constructed of non-corrosive material, steel clad with a non-corrosive material or designed to include a secondary containment system to prevent the release or threatened release of any stored substance.

The UST's will be double-walled providing secondary containment protection around the full circumference of the tank. They will also be made of corrosion resistant fiberglass both inside and out. 3. Use material in the construction or lining of the tank that is compatible with the substance stored. All material being used is compatible with the fuel being stored. The tanks are made of fiberglass and are UL 1316 listed, which means the fiberglass material is compatible with all fuel to be sold at this location.

The fuel vents used in the regular and premium fuel tank systems provide a way for the underground storage tanks to add or release air/fuel vapor from the tanks when the tanks are under pressure or vacuum due to tank refilling, customer pumping or changes in temperature and barometric pressure. Vents allow the tanks to maintain equilibrium preventing rupture or damage caused by excessive pressure/ vacuum. The fuel vents for the proposed fuel station are to be located away from the nearest residential property line. In accordance with the International Fire Code (IFC Section 5704.2.7.3), The vents are UL listed, approved for use in Washington and exceed California's requirements for vapor leakage

Given the timing of Mr. Kline's letter and the community interest in the proposed project, the Examiner assumes that his information was presented to the Sumner Planning Commission which on May 5, 2022, recommended to the City Council that gasoline service stations and convenience stores with gasoline sales no longer be allowed in the GC zone. The Council agreed but did not pass Ordinance 2824 prohibiting future gas stations in the GC until July 18, 2022, which was not only well after the City had issued the Director Decision for Design Review Approval on July 23, 2021, and the MDNS on May 25, 2022, but most significantly, after the Applicant filed the application for the CUP on July 8, 2022.

Therefore, the Examiner must review the Applicant's CUP application based on the development regulations in effect at that time which did not include a 500-foot public safety buffer. On such review, the Examiner concludes that the Applicant's compliance with all city, state and federal regulations regarding storage and sale of gasoline ensures that the impact of the fuel stations does not rise to the level of being materially detrimental to the public welfare or injurious to the property or improvements in the vicinity of the proposed use or in the district in which the subject property is situated.

- B. The proposed use shall meet or exceed the performance standards that are required in the district it will occupy;

The Examiner herein finds the proposal to be consistent with the applicable special performance standards for properties located in the GC zoning district listed in SMC 18.16.080:

- A. Exterior Mechanical Devices. No building mechanical equipment is shown; however, the use does include some equipment for Electric Vehicle charging, tire air compressor and Co2 and Nitrogen sales. These are located interior on the site and design in a way to screen them. Rooftop equipment should be screened from view due to the buildings highly functional and tall parapet.
- B. Required Open Space and Landscaping. Landscape plans have been included during Design Review and included in this CUP application (see exhibit D). The proposed landscaping shown throughout the projects permitting appears to meet the above requirements and a condition of approval requires plans designed in compliance with SMC 18.41 submitted with development permits that also comply with the projects Design Review, SEPA and CUP plans.
- C. Outdoor Storage of Materials. Not Applicable.
- D. Outdoor Lighting. Outdoor lighting plans will be required at time of development permit approval to confirm that all direct light is down shielded and confined to the site.
- E. Commercially Zoned Properties Adjacent to Residential Properties. The proposed project complies with the design review and SEPA conditions of approval by providing a landscaped setback that exceeds the required 10-foot minimum and includes a 6-foot solid wood fence.
- F. Swimming Pools. Not Applicable.
- G. Trash Receptacles. The proposed trash enclosure will be constructed of a matching brick material as the building with a gate per the design review plans. This enclosure meets the required 15' setback from residential zones and is designed to not interfere with

the cross-access corridor. The enclosure will be secured to deter rummaging through the bins and keep trash from leaving the enclosure.

- H. Accessory antennas. Not applicable.
- I. Any on-site treatment and storage facilities. Not applicable.
- J. Parking areas and pedestrian walkways. Walkways have been designed in compliance with Sumner's code and design guidelines and approved during Design Review to provide safe and separated walkways utilizing a contrasting paved material with walkways being concrete and drive aisles and parking being asphalt. Additionally, the driveway approach along East Main will be a stamped and stained concrete to provide a distinguished and safe crossing point.
- K. Businesses selling firearms. Not applicable.
- L. Expansion of Specified Existing Uses. Not Applicable.
- M. Fences.
 - 1-3. All proposed fences shown throughout the projects previous and current plans are in compliance with the exception of the fence along the south east section of site along Bock Avenue, shown during SEPA and Design Review, of which a segment of fence shown at 6-feet is along the property line. Although this fence creates a visual buffer between the site and neighboring residential, a condition of approval herein will require it to comply with the 5-foot setback to maintain a fenced perimeter that will also include some landscaping between the fence and sidewalk.
 - 4. Fences utilized to enclose drainage facilities Not applicable.
 - 5. No barbed wire. Not proposed.
 - 6. Arbors and trellises. Decorative trellising is used at the north east corner of the site at the corner of Main Street and Bock Avenue. The trellis is built in conjunction with a low brick wall. The top of the trellis measures 9-foot but will be modified at time of development permit to be 8-feet high to be in compliance.
 - 7. Chain Link Fencing. No chain link fencing exception is currently proposed, but if so, it would need to meet this requirement.
 - 8. Exceptions to the fencing standards. No fence exception is proposed under the current project; all fences either meet the standard requirements as shown or as conditioned.
 - 9. Fencing Exceptions Standard, Commercial. Not applicable.
 - 10. Fencing Exceptions Standard, Interchange. Not applicable.
- N. Repealed by Ord. 2624.
- O. Outdoor sales. No outdoor sales are proposed. A convenience store/gas station is not a listed use to be allowed outdoor sales.

- P. For properties located within the area defined as East Main Street in SMC 18.43.020, the setback may be increased to 15-feet when the area between the sidewalk and the building is utilized as usable pedestrian space such as a plaza, outdoor seating, or public art. The proposed site plan includes a building setback from Valley Ave and East Main Street due to overhead power lines and an existing easement. The proposed design creates a design that connects to Main Street, provides landscaped pockets to add a soft touch and includes outdoor seating on paved areas and bicycle parking. The site design has completed design review.
 - Q. All development is subject to applicable Sumner design and development guidelines. The proposed project has completed Design Review. The project went to Sumner's Design Commission for review with a recommendation of approval with conditions and received Director approval with conditions on July 23, 2021.
 - R. Drive-through businesses. Not applicable.
 - S. A light manufacturing. Not applicable.
 - T. A contractor business. Not applicable.
 - U. Truck parking in the IC zone. Not applicable.
 - V. Drive-through businesses. Not applicable.
 - W. Indoor emergency shelters. Not applicable.
 - X. Permanent supportive and transitional housing. Not applicable.
 - Z. Odor and Emissions. Gas stations shall not create odor in such quantities as to be readily detectable beyond the boundaries of the site, or produce air emissions that are not compliant with regional, state, and federal emission standards, and shall utilize best available control technologies to reduce odors and emissions. As discussed herein, the proposed gas fuel stations will be required to comply with all city, state and federal requirements and, thereby, operate without creating offsite odors and emissions.
- C. The proposed development shall be compatible generally with the surrounding land uses in terms of traffic and pedestrian circulation, building and site design.

The proposed development will be compatible generally with the surrounding land uses in terms of traffic, building and site design. Limited traffic impact is anticipated, as this project generally captures existing vehicles already traveling through the area. Any commercial development at this location will increase traffic from the current vacant lot and one single family dwelling. The site and building design comply with Sumner's design and development guidelines and matches or complements the design of many other commercial projects in town.

- D. The proposed use shall be in keeping with the goals and policies of the Sumner comprehensive plan.

As noted above, the Comprehensive Plan includes numerous statements in support of this development. The project incorporates construction of complete streets through sidewalks, street trees and street lights as well as construction and dedication of a cross access corridor per the East Main Street Design Strategy.

- E. All measures have been taken to minimize the possible adverse impacts which the proposed use may have on the area in which it is located.

The proposed convenience store and gas station has been designed to minimize all possible adverse impacts which the proposed use may have on the area. These measures include:

- Site and Building design elements including locating the more intensive aspects of the project towards Main Street and Valley Avenue such as the air compressor, fuel vent, loading and delivery stall and locating such elements as extra parking and potential EV charging closer to residential zones.
- Fencing is shown or conditioned along the south side of the site adjacent to residential zones and continuing north on Bock Avenue. The site also includes a large landscape buffer along the south and southeast sections of the site.
- Lighting is required to be down shielded and ensure lighting does not trespass onto adjacent sites.
- As noted above, the Applicant has made extensive efforts to address the concern for vapors emitting from the storage tanks and pump station and will abide by all city, state and federal regulations regarding the fuel station.

DECISION:

The Applicant has demonstrated by a preponderance of the evidence that the proposal will be consistent with all applicable codes. Therefore, the request in Project Number CUP-2022-0002 is approved subject to the following conditions:

1. This project shall abide by all conditions from the MDNS issued May 25th, 2022, with a final modification issued on April 10, 2023.
2. The project shall abide by the design, layout and conditions from the approved Design Review Director's Decision under PLN-2020-0078. At time of development permit application, the Applicant shall submit construction plans showing substantial compliance with the design approved under PLN-2020-0078 and the projects SEPA documents and determination and include colored building, trash

enclosure and fuel canopy elevations showing and labeling materials. The Applicant shall also include site plans and landscape plans in compliance with Design Review PLN-2020-0078, the projects SEPA documents and determination along with the documents included with the CUP under CUP 2022-0002 and SMC 18.41. All plans submitted during development permits shall include applicable conditions and mitigating measures from the PLN-2020-0078 Director Decision, SEPA MDNS and the project's CUP decision.

3. Alternate locations for the fuel vent should be considered if said alternative would provide for the greatest distance between the fuel vent and residential properties while still ensuring screening to the greatest extent possible from public streets and sidewalks.
4. Right-of-way dedication will be required along all project frontages as necessary to accommodate the required street frontage improvements. The ROW corners will be radiused, not segmented as shown on the site plan.
5. All frontages will be improved by the project with full frontage improvements to meet minimum standards for the roadway. Such improvements will include illumination, sidewalk, planter strip, driveway approaches, etc. as needed due to a lack of existing improvements, damage to existing improvements, or insufficiency of existing improvements.
6. Cross Access corridor: The Cross Access corridor shall be designed, constructed and an easement provided per SMC 18.43.100 prior to final approval and Certificate of Occupancy for this project. The location of the cross-access corridor shall be consistent with the location shown on the project's site plans and run along the project's southern property line and connect Valley Avenue to Bock Avenue.
7. Traffic measures: Signage and or painting shall be installed at the driveway approach on East Main as a Right in Right out driveway. Signage style and location will be at the discretion of the City Engineer and in compliance with the City's standard details and any other applicable MTCA standards.
8. Traffic measures: The driveway approach along East Main will include stamped and stained concrete subject to final design approval by the City Engineer.
9. Truck Circulation: Plans will need to show that the fuel trucks will be able to maneuver without crossing into opposing traffic. Driveway approaches may need to be modified to provide adequate angles. Fuel trucks shall abide by the ingress and egress depicted on the plans.

10. Noise:
- a. Operations at the project site shall abide by the Sumner noise control ordinance, SMC 8.14, which includes a maximum of 57 dBA generated by the project site as measured from residential properties. The maximum dBA must be reduced by 10 dBA between the hours of 10:00 pm through 7:00 am.
 - b. Information demonstrating the dBA of the proposed air compressor shall be provided prior to issuance of development permits for the compressor. If during operation the air compressor or other equipment is found to violate Sumner's noise ordinance, sound attenuating measures shall be implemented until such equipment reaches compliance with SMC 8.14.
 - c. Fuel and other deliveries transported by trucks that would exceed Sumner's reduced dBA maximums as listed in measure 6(a) above shall only occur between the hours of 7:00 am and 10:00 pm.
 - d. The store's loading stall shall be located adjacent to the building as shown in the projects SEPA site plan. Locating the loading stall up against the building in the parking area located south of the building and closets to Valley Ave will keep noise generating activities furthest from residential properties. This stall shall also include a sign asking that the engine be turned off during loading/unloading.
11. Environmental Remediation shall be completed prior to or concurrent with the project's development and shall include cleanup of the site and offsite contamination related to and or coming from this site, specifically the northwest corner of the site and adjacent ROW. Work associated with the convenience store and fuel station site and building may occur at the Applicant's own risk prior to issuance of a No Further Action (NFA) or NFA likely by the Department of Ecology. No Certificate of Occupancy shall be granted until a NFA is issued unless the circumstances in the following sentence are present. If cleanup actions require long-term compliance monitoring to be conducted prior to Ecology issuing a No Further Action determination, a demonstration that exposure pathways are incomplete for building occupants, and written Ecology concurrence, is sufficient to allow for occupation of the building through a temporary certificate of occupancy. All current and future permits must comply with Ecology clean up regulations and any issued NFA and its conditions.
12. Fencing heights and locations shall comply with SMC 18.16 at time of development permit. Fencing shall be required along Bock Avenue south of the driveway approach on Bock Avenue and must be setback from the sidewalk a minimum of five (5) feet and the space between will need to include landscaping.
13. Six (6) foot masonry or wood fencing shall be required along the project's southern property line adjacent to residential zones in compliance with SMC 18.16.080(E).

14. Lighting: A photometric plan showing safe and adequate levels as described in Sumner's Design Guidelines without creating any offsite lighting impacts or light trespass shall be provided prior to issuance of building permit(s). All lighting shall be down shielded and be contained on the property.
15. Air:
 - a. Project development, operations and refueling shall not create any noticeable odor beyond the site's property line.
 - b. Construction and operations shall meet Puget Sound Clean Air Agency regulations and testing.
16. Boundary Line Adjustment (BLA): The project shall complete a BLA or lot consolidation to create a development that will comply with setbacks and development regulations. The BLA or lot consolidation shall be submitted prior to Building Permit issuance and recorded prior to issuance of Certificate of Occupancy.
17. The Project shall abide by all local, State and Federal regulations and receive necessary approvals prior to commencement of work.
18. If ground disturbing activities encounter human skeletal remains during the course of construction, all activity will cease that may cause further disturbance to those remains. The area of the find will be secured and protected from further disturbance until the State provides notice to proceed. The finding of human skeletal remains will be reported to the county medical examiner/coroner and local law enforcement in the most expeditious manner possible. The remains will not be touched, move or further disturbed. The county medical examiner/coroner will assume jurisdiction over the human skeletal remains and make a determination of whether those remains are forensic or non-forensic. If the county medical examiner/coroner determines the remains are non-forensic, then they will report that finding to the Department of Archaeology and Historic Preservation (DAHP) who will then take jurisdiction over the remains. The DAHP will notify any appropriate cemeteries and all affected tribes of the find. The State Physical Anthropologist will make a determination of whether the remains are Indian or Non-Indian and report that finding to any appropriate cemeteries and the affected tribes. The DAHP will then handle all consultation with the affected parties as to the future preservation, excavation and disposition of the remains.

ORDERED this 7th day of June, 2023


STEPHEN R. SHELTON
Hearing Examiner

TRANSMITTED this 7th day of June, 2023, to the following:

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PARTIES OF RECORD

APPEAL NOTICE

CASE NO: CUP-2022-0002

**Convenience Store and Fuel Station
Conditional Use Permit (CUP)**

An appeal of this decision may be filed pursuant to Sumner Municipal Code (SMC) 18.56.030 for Type V decisions through the judicial system within twenty-one (21) days of the date of decision.